

1 JOSEPH H. HUNT
Assistant Attorney General
2 DAVID L. ANDERSON
United States Attorney
3 ANTHONY J. COPPOLINO
Deputy Branch Director
4 JULIA A. HEIMAN (Bar No. 241415)
Senior Counsel
5 CHRISTOPHER HEALY
Trial Attorney
6 United States Department of Justice
Civil Division, Federal Programs Branch
7 P.O. Box 883
Washington, D.C. 20044
8 Telephone: (202) 616-8480
Facsimile: (202) 616-8470
9 Email: Julia.Heiman@usdoj.gov
Attorneys for Defendants

10 MAYER BROWN LLP
LEE H. RUBIN (SBN 141331)
lrubin@mayerbrown.com
12 SAMANTHA BOOTH (SBN 298852)
sbooth@mayerbrown.com
13 Two Palo Alto Square, Suite 300
3000 El Camino Real
14 Palo Alto, CA 94306-2112
Telephone: (650) 331-2000
15 Facsimile: (650) 331-2060
Attorneys for Plaintiff Twitter, Inc.

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

19 TWITTER, INC.,

20 Plaintiff,

21 v.

22 WILLIAM P. BARR, Acting Attorney General
of the United States, *et al.*

23 Defendants.
24
25
26
27
28

Case No. 14-cv-4480-YGR

**JOINT STIPULATION REGARDING
FURTHER PROCEEDINGS
FOLLOWING DEFENDANTS'
ASSERTION OF STATE SECRETS**

Hon. Yvonne Gonzalez Rogers

1 Pursuant to Local Rules 6-1 and 6-2—and in accordance with the Court’s February 14,
2 2019 Order (Dkt. No. 272)—Plaintiff Twitter, Inc. and Defendants William P. Barr, the United
3 States Department of Justice, Christopher Wray, and the Federal Bureau of Investigation
4 (collectively, “Defendants”), by and through their respective counsel of record, submit the
5 following joint stipulation regarding outstanding deadlines in this case.

6 WHEREAS:

7 1. On February 14, 2019, the Court granted the parties’ prior joint stipulation and
8 ordered (1) the Government, by March 15, 2019, to inform the Court and Twitter whether it
9 intends to assert the state secrets privilege in this matter, and (2) the parties, by March 19, 2019,
10 to submit “a proposed schedule for further proceedings based on the Government’s decision
11 regarding an assertion of the state secrets privilege (including a proposed briefing schedule if the
12 Government does decide to invoke the state secrets privilege).” Dkt. No. 272.

13 2. On or about March 15, 2019, Defendants filed a Request that the Court Discharge
14 the Order to Show Cause and Deny Plaintiff’s Request for Access to the Classified Steinbach
15 Declaration, or in the Alternative, a Motion to Dismiss in Light of the Attorney General’s
16 Assertion of the State Secrets Privilege (the “State Secrets Motion”). *See* Dkt. No. 281 (Motion);
17 *see also* Dkt. No. 282 (Notice of Lodging of Classified Declaration of Michael C. McGarrity).

18 3. On March 18 and 19, 2019, the parties met and conferred regarding further
19 proceedings in this matter in light of Defendants’ State Secrets Motion.

20 4. On March 19, 2019, the parties submitted a Joint Stipulation for Extension of
21 Time to File Stipulation Regarding Further Proceedings Following Defendants’ Assertion of
22 State Secrets Privilege, seeking an extension to March 21, 2019, for the parties to file their
23 proposed schedule for further proceedings regarding the State Secrets Motion.

24 5. On March 20, 2019, the Court entered an order granting the parties’ March 19
25 Joint Stipulation and extended the time to submit a proposed briefing schedule to March 21,
26 2019.

1 6. Also on March 20, 2019, Defendants sought Twitter's consent for a two-week
2 extension of the deadline for Defendants to complete their production of their remaining logs for
3 classified documents.

4 7. The parties have agreed to hereby propose the following deadlines:

5 a. Defendants' remaining logs for classified documents shall be due by **April 5,**
6 **2019;**

7 b. Twitter's opposition to the State Secrets Motion shall be due **April 29, 2019;**

8 c. Defendants' reply in support of their State Secrets Motion shall be due **May**
9 **21, 2019;** and

10 d. A hearing on Defendants' State Secrets Motion shall be set for **June 4, 2019,**
11 or any time thereafter that is convenient for the Court.

12 8. Furthermore, Twitter hereby advises the Court of its intent to file a letter by
13 March 29, 2019, requesting a pre-filing conference. At that pre-filing conference, Twitter will
14 move for leave to file a motion for partial summary on its claim alleging a facial challenge to the
15 constitutionality of the FISA regime. Twitter submits that the parties' present dispute over the
16 Government's invocation of the state secrets privilege as to the Classified Steinbach Declaration
17 has no bearing on its facial challenge. Proceedings as to that claim therefore can (and should)
18 proceed in parallel with resolution of any dispute (including any interlocutory appeal) over
19 Twitter's counsel's right to access the Classified Steinbach Declaration for purposes of litigating
20 Twitter's as-applied challenge.

21 9. The Government intends to oppose Plaintiff's forthcoming request for a pre-filing
22 conference and for leave to file a motion for partial summary on its claim alleging a facial
23 challenge to the constitutionality of the FISA regime. For reasons the Government will set forth
24 in its response to Plaintiff's letter, this claim should not be subject to piecemeal adjudication.

25 10. A proposed order on the parties' joint stipulation is attached hereto.
26
27
28

1 Agreed to and submitted by:

2 Dated: March 21, 2019

MAYER BROWN LLP

3 /s/ Lee H. Rubin
4 MAYER BROWN LLP
5 LEE H. RUBIN (SBN 141331)
6 lrubin@mayerbrown.com
7 SAMANTHA BOOTH (SBN 298852)
8 sbooth@mayerbrown.com
9 Two Palo Alto Square, Suite 300
10 3000 El Camino Real
11 Palo Alto, CA 94306-2112
12 Telephone: (650) 331-2000
13 Facsimile: (650) 331-2060

14 *ATTORNEYS FOR PLAINTIFF*
15 *TWITTER, INC.*

16 Pursuant to General Order No. 45, I, Lee H. Rubin, attest that I obtained concurrence in
17 the filing of this document from the following signatories.

18 Dated: March 21, 2019

19 JOSEPH H. HUNT
20 Assistant Attorney General
21 DAVID L. ANDERSON
22 United States Attorney
23 ANTHONY J. COPPOLINO
24 Deputy Branch Director
25 JULIA A. HEIMAN (Bar No. 241415)
26 Senior Counsel
27 CHRISTOPHER HEALY
28 Trial Attorney

19 /s/ Julia A. Heiman
20 JULIA A. HEIMAN, Bar No. 241415
21 U.S. Department of Justice
22 Civil Division, Federal Programs Branch
23 P.O. Box 883
24 Washington, D.C. 20044
25 Julia.Heiman@usdoj.gov

26 *Attorneys for Defendants*

1 JOSEPH H. HUNT
Assistant Attorney General
2 DAVID L. ANDERSON
United States Attorney
3 ANTHONY J. COPPOLINO
Deputy Branch Director
4 JULIA A. HEIMAN (Bar No. 241415)
Senior Counsel
5 CHRISTOPHER HEALY
Trial Attorney
6 United States Department of Justice
Civil Division, Federal Programs Branch
7 P.O. Box 883
Washington, D.C. 20044
8 Telephone: (202) 616-8480
Facsimile: (202) 616-8470
9 Email: Julia.Heiman@usdoj.gov
Attorneys for Defendants

10 MAYER BROWN LLP
LEE H. RUBIN (SBN 141331)
lrubin@mayerbrown.com
12 SAMANTHA BOOTH (SBN 298852)
sbooth@mayerbrown.com
13 Two Palo Alto Square, Suite 300
3000 El Camino Real
14 Palo Alto, CA 94306-2112
Telephone: (650) 331-2000
15 Facsimile: (650) 331-2060
Attorneys for Plaintiff Twitter, Inc.

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

19 TWITTER, INC.,

20 Plaintiff,

21 v.

22 WILLIAM P. BARR, Acting Attorney General
of the United States, *et al.*

23 Defendants.
24
25
26
27
28

Case No. 14-cv-4480-YGR

**[PROPOSED] ORDER RE JOINT
STIPULATION REGARDING FURTHER
PROCEEDINGS FOLLOWING
DEFENDANTS' ASSERTION OF STATE
SECRETS**

Hon. Yvonne Gonzalez Rogers

Pursuant to the joint stipulation of the parties:

1. The deadline for completion of Defendants' remaining logs for classified documents shall be continued to **April 5, 2019**;
2. Twitter's opposition to the State Secrets Motion shall be due **April 29, 2019**;
3. Defendants' reply in support of their State Secrets Motion shall be due **May 21, 2019**; and
4. A hearing on Defendants' State Secrets Motion shall be set for **June 4, 2019**, or any time thereafter that is convenient for the Court.

IT IS SO ORDERED.

Dated: March __, 2019

The Hon. Yvonne Gonzalez Rogers
United States District Judge